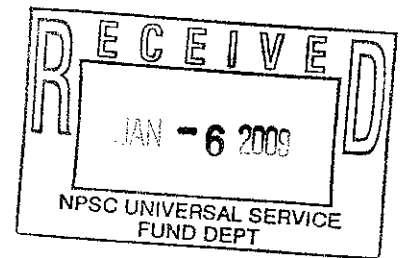


In the Matter of the Nebraska
Public Service Commission, on
its own motion, seeking to
administer the Nebraska
Telehealth Program)

) Application No. NUSF-57
) Progression Order No. 2
) Order Seeking Comment
) October 29, 2008
) Comments of the Nebraska Statewide Telehealth
Network Governing Committee



**COMMENTS OF THE NEBRASKA STATEWIDE TELEHEALTH NETWORK
GOVERNING COMMITTEE ON BEHALF OF
THE NEBRASKA STATEWIDE TELEHEALTH NETWORK**

The Nebraska Statewide Telehealth Network ("NSTN") Governing Committee files these comments on behalf of the Nebraska Statewide Telehealth Network for the Public Service Commission's ("Commission") consideration in Application No. NUSF-57, Progression Order No. 2. The NSTN Governing Committee appreciates the opportunity to provide input on this topic. The NSTN Governing Committee ("Committee") is comprised of representatives from eight hub sites, public health, and the Nebraska Hospital Association and serves as the decision making body for the NSTN.

In the aforementioned progression order, the Commission requests commentary regarding the need to establish minimum requirements for the filing of USAC forms, what the minimum requirements should be and if these requirements should be formalized in a legally binding contractual relationship between the carrier and the HCP. The Committee recognizes that Federal Communications Company ("FCC") Rural Health Support administered by the Universal Services Administrative Support Company ("USAC") is essential to the existence of the NSTN and that securing this funding in a timely manner is essential to both the telecommunications carriers providing the services and the Health Care Providers ("HCPs") receiving the service. The comments provided are intended to reflect this recognition.

Maintaining USAC funding at a level necessary to effectively and efficiently support the NSTN in its current hub and spoke technical structure will require both a short term solution and a long term strategy. We would like to outline both within this comment to illustrate the activities of importance to the NSTN regarding funding at this time.

Filing Methodologies:

1. Long Term Network Sustainability: The current filing methodology for the NSTN is heavily reliant upon the established hub and spoke system with five of the eight hub sites defined as rural and, therefore, eligible to receive funding from USAC for support of NSTN backbone lines. In December, 2004, the FCC released a final order that changed the definition of "rural" for the purposes of the Rural Health Care Support

Mechanism.¹ Acknowledging that some HCPs would no longer be eligible for funding under the new definition, the FCC permitted all HCPs that had received funding commitment from USAC since 1998 to continue to qualify for funding for three (3) years under the prior definition of "rural". This permission was again extended in 2008 to last an additional three years until 2011 largely due to the efforts of local and national stakeholders led by Nebraska Public Service Commissioner, Anne Boyle.

Given the rural nature of the NSTN, retaining the current definition of rural would allow the Network to continue filing under the current methodology or through enhanced consortium methodologies (discussed later). The NSTN will once again look to be part of or take a lead in national attempts to permanently grandfather these sites. Should these efforts fail and the definition change, as is expected in 2011, under the current filing methodology, the NSTN would be at risk of losing over \$223,000 annually when 22 backbone lines originating at three affected hub sites would no longer be eligible for support. These T-1 lines originate at and receive USAC support through Good Samaritan Hospital in Kearney, Nebraska; Saint Francis Medical Center in Grand Island, Nebraska; and Faith Regional Health Services in Norfolk, Nebraska. These 22 lines provide a connection to the Network not only for these three facilities but a total of 40 sites within the Network. In addition, Saint Francis Medical Center serves as the primary hub site for all Network connections, with an additional four backbone lines originating at Regional West Medical Center in Scottsbluff, Nebraska connecting to the DS-3 at this site. While Scottsbluff would remain eligible, its connection to the DS-3 at Grand Island would be at risk, thereby affecting the connections of sixteen western Nebraska sites to the NSTN. Finally, in addition to the hub site impact, one endpoint, Fremont Area Medical Center, would also lose "rural" status.

In preparation for the potential that the rural definition is not indefinitely grandfathered or changed, the NSTN is in the process of developing a proposal to present to the Commission and to the FCC that would allow the NSTN to file as a consortium utilizing a methodology similar to the FCC Pilot Program filing methodology. This would allow NSTN backbone costs to be apportioned to all NSTN HCPs. This would also centralize the filing process. It should be noted that this methodology is not approved at this time. Planning for the proposal is in the initial stages and several options are being considered. The proposal, if approved, will necessitate many changes in the current process.

¹ *Rural Health Care Support Mechanism*, WC Docket 02-60, Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 24613, 23619-20, at paras. 11-13 (2004) (*Second Report and Order*)

If the sites are indefinitely grandfathered or the rural definition is successfully changed to include the previously mentioned hub sites, the NSTN will still either a.) pursue a consortium filing methodology in some form and function, or b.) continue implementation of a strategy in which filing is centralized with a single individual or a very small group of individuals designated by the Committee to ensure timely filing of all sites. Consideration of filing as a consortium, regardless of rural definition, will allow HCPs to work more effectively in organizing the filing process, would increase accountability for filing, would provide a single individual at USAC who would handle all Nebraska filings and would allow for proper apportioning of all applicable services.

2. Short Term Considerations: At this time, rural sites make up approximately 86% of the HCPs participating in the NSTN. As such, there are a significant number of sites for which filing must be completed. The USAC filing process requires several steps typically completed over a relatively significant span of time. The process requires that the HCP, the telecommunications company and USAC provide information and perform certain tasks during this time span before a support schedule and, subsequently, funding credit can be obtained by the carrier, thus there are portions of the process that each of the above organizations control and do not control. For instance, only the HCP can initiate the process starting with filing of the Form 465, only USAC can issue the 467 and the support schedule, and only the telecommunications carrier can invoice for support from USAC. Due to the significant volume of requests that USAC receives, this process, in the past has taken at times more than six months. Using the current year as an example, as of December 19, 2008, USAC has not processed any request for funding from any HCP for Funding Year 2008, which started on July 1, 2008. According to Camelia Rogers, Program Manager, Rural Health Care, USAC, "This is due to two things. First, technology transition which started after the close of FY2007 resulted in delays in processing FY2007. And, second, a very large and unexpected surge in applications in the last two weeks of funding year of FY2007." (This refers to a national surge in late applications).

We believe that the Commission recognizes that regardless of filing deadlines, there is a certain aspect of the process that cannot be controlled by either the HCP or the telecommunications carrier, but is inherent in the filing process that occurs at the USAC level and delays that often occur due to sheer volume of requests at the national level, especially those filed late in the previous year.

That said the NSTN wants to ensure that members fulfill every obligation in controlling those variables that can be controlled and that will enhance the opportunity for the carrier to receive funding in the timeliest fashion possible. To do so, both parties must be held to established and agreed upon timelines. As such, the Committee proposes

that an amended version of the current Letter of Agreement (LOA) be incorporated into a more legally binding contract between the telecommunications carrier and the HCP. The contract would establish both a timeline for filing as well as recourse for each entity if timelines are not met. Language would also establish a process for issuing refunds in cases of overpayment by an HCP as well as a process for collecting payments when an HCP has underpaid, as both situations have occurred in the past.

The current LOAs were established when the NSTN was in initial stages of development. As such, timelines were largely based upon estimates by the sites that had been receiving USAC funding. The NSTN Governing Committee would like to re-establish timelines that would be more reasonable for filing of necessary USAC forms by centralized, experienced filers while allowing for filing to occur prior to or early in the funding year. We propose the following language be placed within legally binding contracts.

The following will be the expectations of both the Hospital/designee and the Carrier:

- 1. On an annual basis, the USAC – Rural Health Care Division declares the “window opening” for the filing process to begin for eligible entities with the Form 465. Within twenty (20) working days of this declaration (opening of the window), the HCP/or their designee will file the USAC form 465 or its equivalent;*
- 2. Following the 28-day waiting period after the acknowledgement by USAC of the Form 465 filing, the HCP/designee is able to file the next form in the funding process, the form 466.*

The following represents different timeline scenarios for the filing of the 466 forms:

*a. **New Service or Request for Information on existing service:***

If a telecommunication service is new, the Carrier will be required to provide the HCP with necessary information to enable the HCP/designee to file the USAC form 466 or its equivalent. This requirement is initiated on a request basis from the USAC filer. The carrier has twenty (20) working days to provide this information to the HCP/designee following the request for information.

Upon the HCP's receipt of the Carrier information and the HCP's validation of the completeness and accuracy of the information and documentation, the HCP/designee shall have thirty (30) working days to file the USAC form 466 and submit the required documentation.

*b. **Contracted (Evergreen) Service:***

There are instances when no information may be requested from the Carrier. Instances may include, but are not limited to, existing

contracts/Evergreen status services or existing service status of the telecommunication services for which filing is taking place. In these cases, the HCP/designee shall have thirty (30) working days following the waiting period to file the USAC form 466.

c. Month-to-Month Service:

In the case where there is no annual or multi-year contract for services, but rather a month-to-month billing status, the HCP/designee will have until July 31 of each funding year to file the form 466. The July 31st date is selected to provide for the first billing cycle of the new USAC funding year to determine the cost.

3. *Within ten (10) working days from the date that the HCP/designee receives notification of the USAC form 467 being available for approval, the HCP/designee will sign and return the form or its equivalent to USAC.*
4. *The HCP will not incur late fees nor receive disconnection or collection notices regarding payment of lines or equipment that will be reimbursed via USAC funding as long as the HCP pays the Carrier the agreed upon sum, equal to the bill minus expected USAC and PSC funding, by the due date established by the Carrier each month and adheres to the timelines delineated above.*

The above timelines set reasonable expectations for all parties involved. To illustrate how the above timeline may play out during a typical year, the following tables show timelines for filing of contracted (2b.) and month-to-month (2c.) services based upon a filing window opening by USAC of March 5:

**Contracted (Evergreen)
Services**

Event	Date
Filing Window Opens	March 5
File 465	April 1
28 Day waiting Period Ends	April 30
File 466	June 12

Month-to-Month Services

Event	Date
Filing Window Opens	March 5
File 465	April 1
28 Day Waiting Period Ends	April 30
File 466	July 31

As shown, the timelines place the HCP documentation in the queue for review by USAC within one month of the official beginning of the filing year (or prior to the filing year if evergreen contracted services exist). USAC currently only requires completed filing by the end of the funding year; therefore, this should place HCPs early in the queue for review.

In addition to establishment of reasonable timelines, the NSTN has created a USAC/PSC Subcommittee, which is made up of those individuals who complete filing for the majority of HCPs within the Network. As the NSTN moves toward a consortium filing methodology, these individuals will play a central role now and in the future in ensuring that timelines are adhered to by all HCPs. USAC and the Commission are invited to have regular representation within this group. At the present time, HCPs have been given the opportunity to centralize filing with this small group of individuals. This allows for better control of the process, filing by individuals who are practiced in the process, and a venue for discussion of issues with USAC, the Commission, telecommunications carriers and HCPs.

The Role of the Public Service Commission:

The Public Service Commission plays a critical role in assisting both the HCPs and the telecommunications carriers in the understanding and application of FCC and USAC regulations as well serving as a mediator when issues arise that cannot be easily resolved by the parties involved. The NSTN would ask that the Commission continue to operate in this role and we would like to thank the Commission for its past support. In addition, the NSTN is amenable to providing a report to the Commission regarding the status of all USAC filings for all HCPs on an annual basis. The report will include status on the filing, receipt and/or postings of forms 465, 466, 467, funding commitment letters and support schedules. Filing status will be tracked by the individual/individuals designated to do so by the NSTN Governing Committee.

In conclusion, the NSTN Governing Committee would like to thank the Commission for seeking comment on this matter. The NSTN is an invaluable resource to the health care providers throughout the State of Nebraska and the Commission's support of the NSTN is appreciated.

Respectfully submitted this fifth day of January, 2009,

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